

## **IMA clarifications on the FAQs posted by Ministry of Health of Government Of India on NMC issue**

### **Q.1: NMC will be a Bureaucratic body**

#### **Government Position-**

Not true. At least 16 members and up to 21 out of 25 members would be only senior medical doctors. The chairperson of NMC would have at least 20 years' medical experience, out of which at least 10 years would be as HoD or Head of Institution. Similarly, Presidents of the 4 autonomous boards would have at least 15 years' medical experience out of which 7 years would be in a leadership role.

#### **IMA CLARIFICATION**

The main concern is that proposed NMC Bill will not be a representative body. It will neither have a national character in terms of nationwide representation, nor a representative character in terms of being a judicious mix of elected and nominated members. It will be a body comprising of mostly member appointed by the Central Govt. without there being representations from the States and Universities as well as State Medical Councils and other stakeholders. Under the proposed Bill the Members are mostly ex-officio Government servants whose appointing as well as disciplinary authority is the Central Govt. In other words NMC completely lacks independence or autonomy which is a must so as to take impartial decisions for the betterment of medical education, academic standards and profession of medicine. It is for this very reason the composition of the NMC is not only Bureaucratic but fundamentally flawed, as they will be constrained to obey the Central Govt. (in power)

policy /dictates rather than applying their independent mind for the betterment of the medical health of the Country.

The NMC will unfortunately function like a 'department' of the Central Government when it will come to decision making in the field of medical education & profession of medicine since all the members are going to be appointed by the Central Government and they will be under an obligation to oblige the Central Govt.. The proposed National Medical Commission Bill, 2017 provides for composition of National Medical Commission. The Commission shall comprise of mostly members appointed by the Central Government as also Directors of reputed institutions and Heads of various Government authorities / department. The autonomy sought to be given to the Commission will be reflected if it comprises of members elected through different modes such as election, nomination by State Government / Universities / State Medical Council etc., instead of having only appointees of Central Government heading and running the Commission In addition as mentioned in the Bill, all the members, will be the heads of their respective institutions, running the same is itself a herculean task so they will not be able to devote time & mind required to the functioning NMC independently. Hence these members will rubber stamp the decisions as proposed at the level of the Central Govt.

**Q.2: Medical practitioners will be able to elect only 5 members in their own body.**

### **Government Position-**

The DRPSC has recommended that 'keeping in mind the disastrous experience with an elected regulated body, the Committee is convinced that ..... regulators of the highest standards of professional integrity and excellence will have to be sought by the Government through a rigorous selection process' (Para 3.16). Although the Committee had recommended a purely selected body, the Government has provided for election of 5 (20%) members.

## **IMA CLARIFICATION**

The representative character of the NMC is warranted for the purposes of ensuring the inclusion of all the representatives from the relevant stakeholders as is the case under Indian Medical Council Act 1956, the composition prescribed therein recognizes 4 key stakeholders namely the Central Government, the State Governments, the Universities having the Medicine faculty and the Registered medical practitioners enrolled in the State Medical Register of the concerned State. Accordingly the Government of India was entitled to nominate 8 members, each State was entitled to nominate its representative who ought to be a Registered Medical Practitioner included in the State Medical Register and residing in the same state, each University having their medical faculty elected its representative through their Senate from amongst the members of the said faculty and one elected representative from amongst the Registered Medical Practitioner included in the State Medical Register.

The representative character of any apex body of professionals in the Country is primarily established on the core principles of democratic functioning wherein members are elected / nominated from various sources which are intrinsically involved in its matters of its functioning. The NMC through members appointed by the Central Government as also Directors of reputed institutions and Heads of various Government authorities / department, shall function contrary to the manner in which most apex body of professionals in the Country work.

It is not just a question of representation to the stakeholders through elections, but the core issue is a binding conformity with the constitutional mandate of adherence to the democratic principles incorporated in the preamble of the Constitution itself which reads that “India shall be a Sovereign, Secular, Socialist, (vide 42nd Amendment) Democratic republic”. In any excuse and name doing away with the electoral representation would be an

antithesis to the very Constitutional Concept which is not open to any waiver, condonation, marginalization or trampling.

In the absence of the people of the various States, it will be difficult to know and understand the geographical difficulties and the various issues faced by the medical professionals, medical colleges & students all over the Country. In the present regime the members from the respective states not only keep the Council updated about the regional problems but also suggest the solutions from their wide experience in the respective States.

Further globally Government regulatory Body had invariably failed as is brought out by the World Medical Association in a very candid and emphatic manner.

### **Q.3: Why can't members of NMC be selected through UPSC?**

#### **Government Position-**

UPSC generally selects persons for government jobs at the induction level. Search-cum-Selection Committees are the norm for most high-level appointments like members of TRAI, CERC, AICTE, UGC and even UPSC itself.

#### **IMA CLARIFICATION**

The regulatory bodies are constituted in order to independently manage their functioning as per the statutory regime. For this purpose, highly qualified professionals with vast experience are required and such cannot be selected by the usual methods of recruitment as adopted by the UPSC. A highly qualified and reputed professional who in the evening of the profession, will never be subjected to a recruitment process at the top of his career and such person are always nominated or elected to manage the affairs of the apex bodies. Therefore the appointment of such persons through UPSC is entirely impractical but also not in the interest of such bodies since highly qualified professionals will never apply for such recruitment by UPSC.

#### **Q.4: There was no discussion with State Governments on NMC Bill.**

##### **Government Position-**

Not True. The Committee under the chairmanship of VC, NITI solicited the views of the State Govts. on the reforms required in MCI in the 1st round in May, 2016. Thereafter, the draft NMC bill was circulated by NITI Aayog to all State Governments for their views in August 2016. States were also invited for another round of discussion and to express their views on the draft NMC Bill in September, 2016. The minutes of these meetings may be seen on the website.

##### **IMA CLARIFICATION**

Notwithstanding, the discussion with the States as claimed towards crystallization while finalizing the Bill; the material reality is that the representation of the State has been marginalized to a great extent. As a matter of fact the States would be represented in an “ex officio manner” through the Vice Chancellor of the Health Sciences University and the Vice Chancellor of the traditional University to which maximum number of the Medical College are affiliated in the given State where there is no Health Sciences University. As such, the discretion of the State to have its nominee is taken away.

Further, the definition of Health Sciences is very wide and includes under its ambit other forms of medicine, for example Ayurveda, Dental Sciences, Nursing, Unani, Siddha, Naturopathy and Yoga. The Vice Chancellor of the Health Sciences University necessarily need not be from the stream of Modern Medicine. Likewise Vice Chancellor of the traditional University, mostly, is not from the field of modern medicine.

The State / Union Territory is given minor representation on the Medical Advisory Body and at a given point of time only three members from the Medical Advisory Board will be appointed as part time Members of the Commission. It is quite strange that the ‘term’ of part time members representing the State in the

Commission will be two years, whereas the Chairpersons and other part-time members have tenure of four year term. It is quite significant to note that a State once represented for a period of 2 years would remain unrepresented till its next term, which would be after 10 years. Such marginalization is in the teeth of the material reality that the Article 1 of the Constitution which defines India as a Union of States. For the very reason the concept of 'federalism' came to be evoked resulting in grouping of the subjects under the Central list, the State list and the Concurrent list respectively. Such marginalisation of States with reference to their autonomy of representation on the NMC is definitely a breach of the concept and principles governing federalism as enshrined in the Constitution

The representation from all States, at all points of time, is extremely essential so as to understand the unique situation of the particular State so as to effectively work in the best interest of the medical education and the profession.

#### **Q.5: No Experts were consulted during drafting of the bill**

##### **Government Position-**

NITI Aayog held nine meetings during which consultations took place with 14 experts out of which 10 were eminent doctors. The Committee under the chairmanship of VC, NITI sought views and suggestions of various experts including eminent physicians and surgeons; former Secretaries to the Government of India, Department of Health and Family Welfare; public health experts; President/Vice-President and other Members of the MCI; representatives of the State Governments; and lawyers. The draft NMC Bill was also placed on NITI's official website to seek views/opinion of General Public and experts. Also, a written request to experts was made to give their views on the draft bill. Around 14500 mails, were received from public, experts (including those who were invited by the Committee), private medical Universities, advocacy groups, MCI and State. In addition,

written submissions were also received from experts. The minutes of these meetings may be seen on the website.

### **IMA CLARIFICATION**

Consultation with the relevant stakeholders has to be honest and bonafide with due credence to the suggestions and observations gained therefrom. It should not be 'cosmetic and for the namesake'. The Consultation as referred in this case seems to be mere lip-service because not even a 'comma' has been altered in the draft bill pursuant to the so called consultations and after examining 14500 emails as claimed by the Ministry. Hence there was no role or consultation of the experts, if any, in the drafting of the bill.

### **Q.6: Why has CEO NITI Aayog been included in the Search Committee?**

#### **Government Position-**

NITI Aayog is the highest body to advise the Government on policy matters including health and medical education and hence inclusion of the CEO will add value to the selection procedure.

### **IMA CLARIFICATION**

The fact that the NITI Aayog is only an advisory body to advise to the Central Government its Chief Executive Officer of an Advisory Body getting included in the search committee is a definite overstepping of the 'advisory jurisdiction' to the 'executive which per-se is impermissible in terms of the set out principles of 'propriety' in the arena of demarcated governance.

### **Q.7: There is nobody from outside the profession in the Bar Council of India and ISRO.**

#### **Government Position-**

The DRPSC has observed that 'a perspective has gained ground that self-regulation alone does not work because medical associations have fiercely protected their turf and any group



consisting entirely of members from the same profession is unlikely to promote and protect public interest over and above their own self-interests and therefore check and balance mechanisms are required.' (Para 3.20). They have recommended 'opening Council membership to diverse stakeholders such as public health experts and social scientists, health economists, health NGOs with an established reputation, legal experts, quality assurance experts, patient advocacy groups, to name but a few' (Para 3.21). Prof Ranjit Roy Committee Report also recommended introduction of non medical members in NMC for increasing transparency especially in terms of ensuring that the rights of patients are heard and protected. Similar councils in developed world such as GMC, UK the counterpart of MCI, also comprises equal number of medical and nonmedical members (lay members). In NMC, given the request of medicos at the draft/consultation stage, only three non-medical experts have been added and the NMC would still be a body largely constituted of medical experts.

### **IMA CLARIFICATION**

A person unknown to the technical functioning of the medical profession or medical education can never understand the pros and cons faced by the persons of the fraternity nor can such person be competent to give suggestions without understanding the nitty-gritty of the system. An individual cannot become a public health expert or health economist without having a qualification in the field of medicine. As far as the NGOs are concerned, the only work in providing treatment to the needy patients and do not have any expertise either in the field of medical education or the field of medical profession. The health is a matter under the State List in the control of the State Govts., who are obliged to provide health care in the States, whereas the NMC bill seeks to regulate the medical education and profession in the Country. Thus, the outsiders and NGOs have neither any qualification nor do they have any experience in such fields.

**Q.8: Power would be centralized in a few hands only**



### **Government Position-**

It was felt by the Committee that a large 108 members General Body as in the existing MCI is too unwieldy and is not conducive to good regulatory organization structure [a1]. Moreover, most regulators like AICTE, UGC, TRAI, CERC, PNGRB, AERA etc. are small in size. Small body will be able to make decisions at a faster pace.

### **IMA CLARIFICATION**

In the name of pruning the size of the regulatory body, the composition of NMC under section 4, Medical Advisory Body under Section 11, the 4 Autonomous Boards under Section 16 and other provisions vide which the experts could be co-opted and could be included in the committees in an open-ended manner brings out the said number to be more un-wielding, hence to say that the proposed bill has pruned the size of the regulatory body is palpably false and operationally erroneous.

However, it is true that the NMC is 'cosmetic' with reference to its authority and jurisdiction as it has only 'generic powers' vested with it, Medical Advisory Council which is expected to meet once in year and has only 'advisory' jurisdiction in nature. The real power is concentrated in Four Autonomous Boards which have only 3 members including its selected Chairman with no representation through the elected members. As a result the said boards also in terms of their composition breach the vital principles of having representative, democratic and national character as a whole. The Chairman will be appointed by the Central Govt. hence wont function independently.

### **Q.9: Three Member Autonomous Boards are too small**

#### **Government Position-**

The three autonomous boards would be assisted by experts, Secretariat and Advisory Committee(s) of Experts as may be constituted by the NMC. The size has been kept small to ensure quick functioning.

## **IMA CLARIFICATION**

In terms of the composition included at Section 16, the autonomous boards have three members only, who have all the authority vested in them. To say that the number is kept small for the quick functioning is nothing short of an apology. Other councils like Dental Council of India, Nursing Council of India, Homeopathy Council of India etc. are all having similar structure like Medical Council of India i.e. the various committees are having members from its general body and also members nominated from the Central Govt., thus there is representation as well as rule of majority and less scope of any favouritism or personal approach. The IMA has never come across any decision which on account of a bigger membership of the specific committees, had been delayed beyond the time schedules as laid down by the Hon'ble Supreme Court.

## **Q.10: How will the Boards be autonomous vis a vis NMC**

### **Government Position-**

Since the Presidents and members will be appointed directly by the Government, there will be a limit to the influence of NMC on the functioning of the Boards. Moreover, there is a clear segregation of powers of these four autonomous boards and it has been ensured that standard setting body will be different from those ensure compliance to the standards set.

NMC has two jurisdictions: (1) laying down regulations and policies guiding the boards in discharge of their duties. The Boards then get to decide autonomously individual cases in the light of the regulations laid down. (2) Exercise Appellate jurisdiction over the order of the Boards.

## **IMA CLARIFICATION**

The Boards are just designated as Autonomous, for the sake of it and a bare reading of the Bill demonstrates that the said Boards

would be merely seeking 'directions' from NMC. As if this was not enough, they would also be required to faithfully carry out the 'directions' issued by the Central Government from time to time on account of the membership. Further the Central Government is vested with the authority to issue directions on all matters of 'public policy' which would be binding in nature and mandatory in character.

Further as to what would constitute 'public policy' would be the sole domain and discretion of the Central Government. As such, an autonomous board comprising of a selected chairman with two nominated members and devoid of elected members is bound to be under the 'directions' of NMC and the 'dictates' of the Central Government looks 'subservient' and obediently subordinate than being Autonomous in any sense. Further it is a fallacy to presume that Central Government Nominees cannot be influenced and elected members are handily influenced.

### **Q.11: Full time members will practically run NMC**

#### **Government Position-**

All full-time/part-time members will have the same voting rights in NMC. The only real full-time members would be the Chairperson, Presidents of the four boards and Member Secretary.

#### **IMA CLARIFICATION**

The Composition of the NMC and the Autonomous Boards clearly stipulates that they would be run and managed by the full time members only. The same has been worked out with this very purpose resulting in grossest possible marginalization of part time and elected members.

### **Q.12: The bill is pro-private medical colleges.**

#### **Government Position-**

Section 28(1) of the Bill states that no person shall establish a new medical college without obtaining prior permission of the MAR Board. There is no separate provision for private colleges and all the provisions apply uniformly to Government and private medical colleges. Procedures have been simplified and outcome-based monitoring has been introduced to reduce the necessity of repeated inspections.

### **IMA CLARIFICATION**

The proposed bill indeed is Pro-Private medical Colleges because the MAR board is entitled to look into grant of permission only for the starting of a medical college. It is totally silent in regards to the Jurisdiction of the same board in respect of starting of Postgraduate courses including Super-specialty and also increase in the annual intake of Undergraduate as well as Postgraduate and Super-specialty courses ongoing in concerned medical colleges / institutions.

To say that this is simplification of the procedure and reduction in repeated inspections is nothing but giving a free hand and easy access to these entitlements devoid of 'desired checks and appropriate balances'. This is nothing short of giving an absolute free hand attempt at facilitating the private sector to capture anything and everything handily, easily, liberally and freely.

This has been drafted to favour the private medical colleges instead of medical students whose interest is supreme and is required to be looked after by the apex body in the field of medicine. It will be the Statutory duty of NMC later on, to ensure that a medical student is being provided proper teaching / training in the medical colleges, year after year as the said students will provide medical aid to the citizens of the Country. The Bill is silent on the aspect of annual renewals required to be obtained by every college for admitting students till the time the course has been recognized by the Central Government.

As stated above, under the new Bill, the college is free to admit students without seeking annual renewals from MAR. It is important to ensure that the students pursuing their medicine

courses receive proper teaching and training in their respective institutions. Therefore, it is imperative that colleges should be granted permission to admit students if they fulfil the requirement of enhanced admission capacity for which annual renewal to be obtained by the college is very crucial.

If an institution is given discretion to admit students without obtaining annual renewal then there is an apparent danger that even deficient colleges will admit students. Such students will not receive proper teaching and training in medical colleges. Thus, the career of the students will be in jeopardy as also half-baked doctors who have not received proper teaching and training will pass out from the colleges.

### **Q.13: Free increase in number of seats and introduction of PG courses will affect quality of education.**

#### **Government Position-**

All increased seats would be inspected before recognition. Adherence to prescribed minimum standards would be maintained on the website of the College concerned with heavy penalties in the event of furnishing false information. Licentiate exam will ensure the quality of graduating students.

#### **IMA CLARIFICATION**

It is true that free increase in number of seats and introduction of PG courses will compromise with the desired quality of Postgraduate Medical Education and result in generation of half-baked specialists who would be instead of serving the society through health care delivery would pose greatest threat to its efficacy and efficiency as a whole. Further, the Licentiate exam is to ensure standard of competency after MBBS degree and not after PG degree.

In the present regime, surprise inspections are conducted so as to give permissions to start medicine courses as well as for recognition of the same. Licentiate exam is to ensure standard of competency after MBBS degree and not after PG degree.

Licentiate exam cannot be used to take away the requirement of checking whether medical; colleges have adequate infrastructure, teachers etc.

#### **Q.14: Why has a licentiate Exam been introduced?**

##### **Government Position-**

This has been done on the basis of DRPSC recommendations (Para 6.12)

##### **IMA CLARIFICATION**

Introduction of a Licentiate Examination is an antithesis to the very objective of the proposed bill of augmenting the availability of trained health manpower for the rural healthcare delivery system. In reality those well over 50% of the medical graduates in a roundabout manner failing to clear the said licentiate examination would be unavailable for any health care delivery and thus would be rendered ineligible to practice medicine. The nature of impact of the said examination could be more significant on the learners and graduates belonging to the marginalized and economically weaker sections as they would be devoid of even their livelihood. This would also undermine the sanctity of certifying standards of the various examinations conducting universities and questioning their certifying standards as a whole.

#### **Q.15: Can the licentiate Exam be merged with common final year Exam ?**

##### **Government Position-**

No format for the licentiate exam has been prescribed in the Act. As an expert body the NMC will take a call on the format and design of NLE and frame regulations after appropriate consultation. It is possible for NMC to take a decision to merge the licentiate exam with common final year exam.

## **IMA CLARIFICATION**

No Comments

### **Q.16: Licentiate Exam should be replaced by a common Final year Exam**

#### **Government Position-**

The DRPSC had noted the demand for a common final year exam instead of an exit exam (Para 5.32) but had finally recommended a common exit exam (Para 5.34)

## **IMA CLARIFICATION**

The final MBBS examination itself being converted into a licentiate examination is a welcome step. The same would be in tune with the objectives of the bill to augment the availability of the trained manpower for the healthcare delivery system.

### **Q.17: What are the pros and cons of a common final year Exam?**

#### **Government Position-**

The biggest advantage of a common final year exam is that students will have to appear for only one examination. However, there are several issues which will have to be considered by NMC before deciding to go for a common final year exam. These include:

- Knowledge of only 4 subjects would be tested to grant licence.
- Universities may not agree since their right to confer degrees would be subordinated to an exam conducted by NMC.
- Those who fail would have to stay behind in the concerned medical college, leading to issues of infrastructure and extra fees payment. They would not even become graduates in order to qualify for various recruitment examinations which are open to graduates.



- Students tend to repeat NEET-PG in order to improve their rank, so that they can get admission to PG courses in good colleges. Rank improvement will not be possible with a common final year exam.
- NMC would become party to all litigation related to local issues in Colleges. In the event of a stay order granted due to local reasons such as delayed session in a College, the entire licentiate exam will get affected.
- Foreign medical graduates who wish to practice in India would either have to be asked to rewrite the common final year exam or FMGE will have to be restored.

### **IMA CLARIFICATION**

The Common final year examination is difficult with respect to its feasibility and also its legal permissibility because, the authority of conducting examination, assessment thereto, declaring results and conferring the academic degree is exclusively within the ambit, authority and jurisdiction of the University which is explicitly covered vide the definition included at section 2(f) and section 3 of the UGC Act 1956. Further, the University is a 'State' by itself within the scope and meaning of Article 12 of the Constitution of India.

### **Q.18: Will graduates of AIIMS, etc. be required to take the licentiate exam?**

#### **Government Position-**

This would not be required since the Institutes of National Importance have their own Act of Parliament and do not fall within the purview of NMC. However, if they wish to take up post-graduation in any medical college within the purview of NMC, then they would have to take the licentiate exam as it will be utilized for post-graduate admissions also.

### **IMA CLARIFICATION**

Primarily there is no relevance for a licentiate examination and more so keeping students passing out from institutions like AIIMS outside its ambit is discriminatory and a breach of guarantee of equality without any discrimination enshrined in the Constitution.

**Q.19: Can the licentiate Exam be repeated for rank improvement?**

**Government Position-**

Yes the exam can be repeated to improve rank for PG admissions.

**IMA CLARIFICATION**

The concept of licentiate examination itself is unnecessary and uncalled for.

**Q.20: NMC has very little representation of States**

**Government Position-**

3 members on rotational basis and 5 elected members would represent States. Thus 8 out of 25 members will be representing States.

**IMA CLARIFICATION**

The representation of States genuinely is minuscule and has been made more so by taking away its discretion to nominate its nominee and providing states 'rotational representation' for a limited term of two years and thereafter the State remaining unrepresented for a period of 10 years, is nothing short of mockery of the State representation on the NMC and is a grossest possible onslaught on the concept of Federalism incorporated in the Constitution of India.

Such marginalization is in the teeth of the material reality that the Article 1 of the Constitution which defines India as a Union of States. For the very reason the concept of federalism came to be evoked resulting in grouping of the subjects under the Central list,

the State list and the Concurrent list respectively. Such marginalisation of States with reference to their autonomy of representation on the NMC is definitely a breach of the concept and principals governing federalism.

The representation from all States, at all points of time, is extremely essential so as to understand the unique situation of the particular State so as to effectively work in the best interest of the medical education and the profession.

**Q.21: There should be representation from AYUSH streams in NMC.**

**Government Position-**

NMC is primarily meant to regulate education and practice of modern medicine.

**IMA CLARIFICATION**

There cannot be a representation from AYUSH streams in NMC because alternative stream of medicine does not have any commonality in the education of the profession.

**Q.22: The Member Secretary should be appointed by NMC, not the Government.**

**Government Position-**

Even if Secretary is appointed by the NMC, prior approval of ACC would be required as per standing DOPT instructions. These instructions are invariably followed even in the appointment of Directors of AIIMS, and other Institutes of National Importance. It stands to reason that appointment of Member Secretary also should be through the same rigorous selection procedure as is followed for Chairperson NMC and Presidents of autonomous boards.

**IMA CLARIFICATION**

In order to ensure that there is greater autonomy the member secretary of the Commission for has to be appointed by the Commission and must belong to the stream of modern medicine. This is for the simple reason that the secretary has to deal with not only the 'administrative matters', but also the matters pertaining to the 'Medical Education'.

Apart from broadening the eligibility clause for the post of secretary, the proposed bill contemplates the age of superannuation to be raised to 70 years for the incumbent to the post of secretary which exclusively goes to indicate that the entire scheme is solely aimed at the rehabilitation of retired bureaucrats.

### **Q.23: Retrenchment of existing MCI staff will cause hardship.**

#### **Government Position-**

Adequate compensation will be paid to all such employees as specified in Proviso 2, Section 58(3) of the Act. In view of the past legacy of MCI, it will not be advisable to take these employees into the NMC secretariat.

#### **IMA CLARIFICATION**

Retrenchment of the existing employees of the Medical Council of India from their permanent employment is not only 'inhuman, barbaric' but also bad in law. As such, it tramples upon the mandate vested with a citizen of decent and dignified living through sources of livelihood as his fundamental right guaranteed under Article 21 of the Constitution, but also, infringes upon article 12 of the constitution whereby this employment is in the ambit of a designated State who is duty bound to be an 'ideal employer' in perception and reality . Further, the experience gained by the employees over the years could be utilised in a better and effective way by absorbing them at the equivalent post in the new body.

## **Q.24: Why has a separate autonomous board been constituted as an accreditation body instead of relying on NAAC?**

### **Government Position-**

NAAC accreditation is not mandatory. Moreover, accreditation of medical colleges needs to be done on specialized parameters rather than the general parameters used by NAAC. Medical Education (ME) is a specialized area which needs technical expertise for evaluation. AICTE is a separate accreditation body to regulate technical institutions. Similar kind of structure is required to accredit ME institutions.

### **IMA CLARIFICATION**

An independent accreditation board autonomous in character exclusively for medical education is desired and warranted. NAAC for that matter is a creation under the UGC Act and by the very nature of operation is for the accreditation of Higher education Institutions and not exclusively for the medical education Institutes. Likewise the National Accreditation Boards under the All India Council for Technical Education Act is for Engineering and Technological Institutions.

## **Q.25: There is no representation of SC/ST/OBC in NMC.**

### **Government Position-**

There was no representation in MCI also. Other regulators such as AICTE, UGC CERC, TRAI, AERA etc. also do not have any such representation.

### **IMA CLARIFICATION**

The observation thereat in concurred with.

## **Q.26: Medical research is a function of ICMR, not NMC.**

### **Government Position-**

Section 10(1)(a) of the NMC Act empowers the NMC to 'lay down policies for regulating medical institutions, medical researches and medical professionals and make necessary regulations in this behalf'. The reference here is to medical research as is carried out in medical colleges as defined in Section 2(i). There is no intention to assume the role of ICMR.

### **IMA CLARIFICATION**

The observation thereat is concurred with.

### **Q.27: Developing a Roadmap for Human Resources in Health and Health care infrastructure is a function of the Health Ministry, not NMC**

#### **Government Position-**

NMC's stand on utilizing medical professionals under the proviso of Section 33, increasing the number of medical seats in the country and designing courses under Section 49(4) has to be shaped by an assessment of the requirements of human resources for health and healthcare infrastructure. MCI did not take active interest in any such planning for the future. The roadmap referred to in this subsection pertains to the future course of action to be adopted by NMC itself.

### **IMA CLARIFICATION**

It is the considered opinion that the development of the road map in human resources in Health and Health care infrastructure is totally the function of the Government of India and does not have any concern with the medical education or its profession.

### **Q.28: Will there be any change in the role of state Medical Councils?**

#### **Government Position-**

Under the MCI Act, State Medical Councils look after registration of medical practitioners and enforcement of professional ethics. They will continue to perform these roles. NMC Bill does not

poach upon the role of State Medical Councils. It rather promotes the States to constitute State Medical Councils within three years of the commencement of this Act. (Clause 30(1)).

### **IMA CLARIFICATION**

The proposed Bill is aimed as destroying the autonomy of the State Medical Councils. NMC, the MAR board and the Central Government all have been vested with the statutory authority vide explicit governing provisions to issue 'directions' binding in nature and mandatory in character to the State Medicine Councils, inspite of the fact that State Councils are the creation of the respective State legislative enactment on the premise that 'health is a state subject' and therefore cannot be trespassed in any mode or manner by the Central Govt.

However, it is interesting to note that in case on a same subject, directions issued by the three authorities are different and divergent from each other, which one to be obeyed would be a big exercise in itself. More so, such a draconian position resulting in subservience of the State Medical Councils is a big blow to the concept of Federalism as enshrined in the constitution as one of its special and unique features.

**Q,29: Fine upto 10 times the annual fees will give a handle for extortion by inspectors**

### **Government Position-**

At present penalties are not graded. It is binary; either recognition or de-recognition. This gives huge leeway to the assessors/inspectors of MCI to extract rent. A graded system of monetary penalties with de-recognition after 3 instances of continued violation and increasing fines are exhausted will actually be more corrective and less extractive than the current provisions of MCI Act. It is further specified in Section 26(1)(f) that the imposition of monetary penalty would be accordance with the regulations made for this purpose.



## **IMA CLARIFICATION**

The imposition of a penalty in terms of heavy fines is open to the likelihood of it being abused is quote imminent, ultimately opening floodgates for free flowing corruption. In the present MCI Act penalty provision is graded. Initially in view of deficiencies permission is not recommended by MCI to admit new batch and after giving number of opportunities to rectify deficiencies, if the institution fails to rectify than only de-recognition is recommended to Central Government. Thereafter it is Central Government takes a final call on the recommendation of MCI.

In this way, the medical college is given opportunity to bring up the infrastructure and other facilities in their college. In any case, a fine or penalty can never be in the interest of medical education once the students have already completed their course in a half baked medical college and also not in the interest of the medical profession as once these half baked doctors start medical practice the same will be detrimental to the public.

## **Q.30: Penalty upto 10 times of the annual fees will be insignificant for Government Colleges**

### **Government Position-**

Any penalty on a Government College has to be paid through the consolidated fund. Irrespective of the total amount involved, such unnecessary penal expenditure would be scrutinized by auditors, finance departments and the legislature. Such inbuilt accountability will ensure that corrective action is taken by the concerned State government.

## **IMA CLARIFICATION**

No Comments

### **Q.31: Why has a parallel PG Degree in the form of DNB been retained?**

#### **Government Position-**

On account of its design, the DNB course allows post-graduate education in comparatively smaller towns which may not have medical colleges. This would help in improving the geographical location of PG seats. Moreover, there is a severe shortage of faculty for medical colleges. To meet the expanded demand for faculty, we need to recognize DNB as equivalent to specialist.

#### **IMA CLARIFICATION**

Retention of the parallel PG degree in the form of DNB is questionable because the parity thereto itself is disputable on several academic and administrative considerations. The courses being mostly run in non-teaching hospitals which are devoid of full time faculty, handy clinical material , structured teaching schedule, required academic monitoring and planned skill inculcation. This results in compromised teaching and learning and therefore ending up in generation of compromised specialists and a resultant compulsive compromise with the resultant health care delivery system catering to the cause of people in the country.

### **Q.32: No steps have been proposed to encourage setting up of medical Colleges in remote areas**

#### **Government Position-**

Not true. NMC bill provides for relaxation of criteria for the medical colleges which are set up in underserved areas which would be specified in the regulations to the Act. (Proviso to Clause 29 (d)). Further, to address this issue, Government of India is running a scheme to set up 58 medical colleges in underserved areas. 24 more medical colleges are proposed to be taken up in the second phase. In order to enhance the availability of faculty, DNB qualification has been made completely equivalent to MD/MS in the NMC Act and adequate provisions have also been

made to allow foreign faculty. The question of allowing equated designations to consultants has to be dealt in the regulations for qualifications of teachers by NMC.

### **IMA CLARIFICATION**

In this regard the suggestion of the Medical Council of India is worthwhile, wherein they have proposed a National Perspective Development plan for geographic location of new medical colleges to be established by the Government. The said locations would be on the basis of a socio-economic backwardness of the region and therefore the resultant accrual of the priority. The said proposition is in tune with the mandate included under Article 371 (2) of the Constitution of India.

### **Q.33: The Second Appeal to Government is not proper since Government only would be deciding matters**

#### **Government Position-**

All decisions would be taken by autonomous boards and first appeal shall lie to NMC. Government will have no role in decision making and will only serve as an appellate body for individual cases. Judicial remedy would continue to be available after Government decides appeals.

### **IMA CLARIFICATION**

The second appeal lying with the government is an antithesis to the so called autonomy accorded to NMC. It has been handily made available to the Government to be sitting over the decisions of the NMC and yet calling them autonomous. This proves the point that the Central Govt. shall take over the NMC as its department / wing and make it function as per its policy.

### **Q.34: Why has the provision for imprisonment of the Quacks been removed?**

#### **Government Position-**

Under the MCI act, the penalty for unregistered practitioners was imprisonment up to 1 year and/or fine up to Rs. 1000. This has been replaced by a fine between Rs. 1 lakh and 5 lakh. It may be noted that the incidence of imprisonment under the existing provisions is extremely low and monetary penalty should prove to be a more effective enforceable provision. Further, The Indian Penal Code provides for imprisonment of up to 2 years for death caused due to negligence. This Section 304A can be applied to medical professionals when there is gross negligence. The following sections of IPC 1860 contain the law for medical malpractice in India: 52, 80, 81, 83, 88, 90, 91, 92 304A, 337 and 338. Hence, the bill in consideration refrains from creating a new/additional law to deal with criminal misconduct of doctors. In any case, numerous litigations are pending and thus it has become difficult to enforce provisions.

### **IMA CLARIFICATION**

The need of the hour is that the Government of India should come out explicitly with the Anti Quackery bill which is pending since long and which could prove to be an answer to the substantial ills which are plaguing the healthcare delivery system in the country. Perhaps it is the lack of the political will that is coming in the way and therefore the compulsion of evoking prepositions which are nothing short of lip sympathy than a real answer to the panacea of ills plaguing the scenario.

### **Q.35: Why has prior approval not been mandated for regulations to be made by NMC**

#### **Government Position-**

The process of consultations has been made mandatory by specifying in Section 55(1) that regulations would be made only after previous publication. It is also specified that regulations must be consistent with the NMC Act and the rules made thereunder. With these stipulations, full autonomy has been granted to NMC to make regulations.

## **IMA CLARIFICATION**

The requirement as stipulated in section 55 (1) of the proposed bill pertaining to the mandatory process of consultation with the Government of India for prescribing regulations is antithesis to the required autonomy of the regulatory body as the experience says that the same has been time consuming and as a result of which the timely implementations of the proposed regulations does not take place. It has been the consistent experience that Government had taken several years to approve many recommendations of MCI on amendments of regulations for better quality education including those in the academic domain which have resulted in lack of timely implementation and loss of timely relevance.

### **Q.36: How will NMC ensure more Accountability?**

#### **Government Position-**

Rigorous and independent selection of members through a transparent process will ensure greater accountability. The DRPSC felt that 'keeping in mind the disastrous experience with an elected regulatory body..... regulators of the highest standards of professional integrity and excellence have to be sought by the Government through a rigorous selection process'. (Para 3.16) Four Autonomous Boards have been suggested which are given autonomy to frame policies, standards, guidelines etc. These four Autonomous Boards will function under the NMC. There is clear segregation of powers of these four autonomous boards. Further, Central Govt. has power to give directions and supersede to Commission as well as Autonomous Boards.

## **IMA CLARIFICATION**

As a matter of fact the discretionary powers that have been vested with the autonomous boards, the Central government and NMC all are open for liberal abuse and end up in patronizing corruption in a handy and free-flowing manner. This by itself is an indication of acute paucity of required 'checks and balances' which should

have been worked out in the proposed bill, but unfortunately have not been provided for in any mode or manner. Resultantly the concept of accountability has been badly and grossly compromised in its entirety.

### **Q.37: Having one representative of each State in the MAC is unfair to States having a large number of Doctors**

#### **Government Position-**

Each State is represented in the MAC so that the benefit of the States' experiences on policy matters can be obtained and also State specific issues can be raised. The Vice chancellor of the health university or university having maximum number of medical colleges would represent the State. The intention is not to have representation of doctors in proportion to their strength in their State.

#### **IMA CLARIFICATION**

The representation of the State as a whole has been marginalized and they have been reduced down to non entities which is a big blow to the vital Constitutional concept of Federalism, which is tragic and unfortunate.

### **Q.38: Doctors who fail the licentiate Exams will be allowed to practice under the proviso to Section 33**

#### **Government Position-**

The proviso to Section 33 is not meant to allow doctors failing the NLE to practice but is intended to allow medical professionals like nurse practitioners, dentists and possibly any shorter duration allopathy courses introduced by NMC in future.

#### **IMA CLARIFICATION**

This is one more discretionary avenue to be availed for permitting the failed graduates at the national licentiate exam which apart from being discretionary is also discriminating and open for grossest possible abuse. To say that the proviso to section 33 is

meant for allowing Nurse practitioners, dentists to practice modern medicine is a figment of imagination for want of explicit provision incorporated in the present Bill and therefore to that extent is misleading in nature and statutorily impermissible in character.

### **Q.39: Why have only 40% seats been regulated in terms of fees?**

#### **Government Position-**

There was no provision of regulation of fees in the IMC Act. Regulation of 40% seats is a step forward. The proportion of regulated seats has a direct impact on the fees of remaining seats and a reasonable balance has to be struck so that the fees of unregulated seats do not become unviable.

#### **IMA CLARIFICATION**

The provision for regulation of fees for seats upto 40% means anything from 0 to 40%, whereby at any given point of time 60% of the seats in private medical college would be outside the said ambit of prescription and the largest chunk could be freely available for the private managements to have a free field. As such, the said discretionary provision is pro-rich and anti poor. Moreover fees of all 100% seats in a private medical colleges are fixed by the respective state Governments. IN the present regime after the introduction of NEET Examination.

It is only the Deemed Universities, which are outside the said ambit and jurisdiction, primarily on the count that as they are created under section 3 of the UGC Act, 1956, which is a Central enactment, and have an All India character, the chargeable fee thereat cannot be regulated by the State Govt. But then is it not the onus of the Central Govt. to take them under their fold by explicit provisions to be incorporated, which is missing in the proposed Bill and therefore it goes a long way in reflecting the intention of the Central Govt. on the required count.



#### **Q.40: Why can't a cap be proposed on the fees for all seats**

##### **Government Position-**

The cost of setting up medical colleges varies from State to State and according to the quality of infrastructure created. Moreover in the case of PG seats, the fee varies widely between pre-and para-clinical subjects and highly sought after subjects on the other hand. Hence a uniform cap on the fees that can be charged would be difficult.

##### **IMA CLARIFICATION**

Fees of all seats in private colleges are fixed by the respective state Governments. Admissions in Deemed universities are made by the central Government and no fee is fixed by the central Government in these colleges, which by itself is a contradiction and perhaps a conscious way availed by the Central Govt. of providing Deemed Universities a free hand for themselves.

#### **Q.41: Regulation of fees of 40% seats would lead to regulation of SC/ST/OBC seats only.**

##### **Government Position-**

SC/ST/OBC quota in medical education is confined to Government/State quota seats only. Fees for all State quota seats would be fixed by State Governments, out of which fees of 40% seats could be fixed in accordance with NMC guidelines.

##### **IMA CLARIFICATION**

It is not correct that SC/ST/OBC reservations are only in Government colleges. There are states where reservations of SC/ST/OBC also exist in private colleges, as well.

#### **Q.42: What is the proportion of seats for which fees is fixed by the State Governments under the present dispensation?**

### **Government Position-**

This varies from State to State according to the MoUs signed by private medical colleges. Generally 33-50% of seats in private medical colleges are designated as State quota seats. In most States fees of seats in deemed universities is not regulated by State Governments.

### **IMA CLARIFICATION**

Fees of all seats in private colleges are fixed by the respective state Governments. Admissions in Deemed universities are made by the central Government and no fee is fixed by the central Government of even one seat in these colleges under the ambit of Deemed Universities, which speaks volumes about the intent of the Central Govt. on letting them a free hand of their own.

### **Q.43: Why has a provision for bridge course for AYUSH been added in Section 49 (4)?**

### **Government Position-**

India has a doctor-population ratio of 1:1655 as compared with the WHO standards of 1:1000. In addition, city doctors are not willing to work in rural areas as can be seen in the Urban Rural ratio of doctor density (3.8:1). There are 7,71,468 AYUSH practitioners in India who can be leveraged to improve the health access situation of the country.

There is already a policy for co-locating AYUSH and allopathy to ensure better utilization of resources. Further, with the government's ambitious target to revamp 1,50,000 Sub Health Centres into Health and Wellness Centres, there is a need of large human resource to meet this challenge. AYUSH has an effective role in integrating the preventive and promotive aspect of healthcare. In addition, with growing incidence of non-communicable diseases (NCD), there is a need to provide holistic prevention and treatment of diseases.

In many places around the world doctors are not taking care of the preventive and wellness aspect of healthcare. Countries such as Thailand, Mozambique, China, and New York have regularized community health workers/non-allopathic health providers into mainstream health services, with improved health outcomes. We also need to take such kind of steps when we have acute shortage of doctors and specialists.

The NMC bill seeks to fill in the gaps of availability of health care personnel by facilitating trained AYUSH practitioners to expand their skill sets through a Bridge Course and provide preventive and promotive allopathic care. The bridge course may help address this demand and better utilization of resources, and make the health sector a bigger provider of employment. The NMC Bill also promotes this through raising exposure of such NCD patients to non-allopathic practitioners in addition to allopathic doctors.

Thus, in order to homogenize and regulate the entry of AYUSH professionals towards practicing modern medicine through a strict regime, this bill has provided for the clause. Various States such as Maharashtra, Assam, UK, Haryana, Karnataka and Uttar Pradesh etc. have already amended their Acts and permitted AYUSH professionals to practice modern systems and prescribe all modern medicines.

Any bridge course will be introduced only by a unanimous vote as provided in Section 49(4) and hence each one of the allopathic doctors in the NMC will have a veto power. Even if the bridge course is introduced, it will only be for prescribing specified medicines at specified levels. The provision is intended for prescribing a small number of medicines including OTC drugs at the Sub-Centre/PHC level.

### **IMA CLARIFICATION**

The provision for a 'Bridge course' in the proposed bill is nothing short of providing a 'Backdoor entry' to AYUSH and Homeopathy practitioners into Medical Profession which apart from

generating a 'mixed pathy' would also severely endanger the pure practice of Ayurveda and Homeopathy which the Government proclaims of patronizing in a big way. This by itself is also an antithesis to the entire policy declaration and objectives structured for evoking a separate Department of AYUSH as a whole. It was also be a large public danger since persons without knowledge and experience will start treating patients in another system of medicine.

#### **Q.44: Instead of a bridge course for AYUSH, the focus should have been on Nurse Practitioners and Dentists**

##### **Government Position-**

Nurse practitioners and dentists can be allowed under the proviso to Section 33, which is applicable to 'medical professionals'. It needs to be clarified that all professionals associated with modern medicine systems fall in this category and not only MBBS doctors.

##### **IMA CLARIFICATION**

Any backdoor entry through a 'Bridge course', be it AYUSH doctors or Dentists or Nurse Practitioners is palpably bad, uncalled for, legally impermissible, morally wrong, ethically bad and undesirable as well. It cannot be allowed as the same relates to risking a human life.

#### **Q.45: What was the need to include a clause for prescription of allopathic medicines by suitably educated AYUSH doctors**

##### **Government Position-**

As per Supreme Court rulings, AYUSH doctors cannot prescribe any allopathic medicine until there is a provision in the Act. In view of this an enabling provision is required in the Act.

##### **IMA CLARIFICATION**

The 'enabling' provision in the proposed bill providing AYUSH and Homeopathy practitioners into medical profession is

inconsistent with the definition of the word 'medicine' included in section 2 of the proposed bill. In legislative parlance there is no place for any enabling provision which is not in tandem with the definition statutorily incorporated. To that extent the said enabling provision turns out to be inconsistent with the required legislative parlance.

#### **Q.46: Bridge Course would be unscientific and dangerous**

##### **Government Position-**

NMC will be dominated by allopathic doctors. If all of them unanimously approve a bridge course after due consideration, then there is no reason to assume that it will be unscientific and dangerous. The course would be designed in such a manner that it would enable the participants to prescribe a limited set of medicines in a responsible manner.

##### **IMA CLARIFICATION**

The concept of the bridge course itself being unacceptable, its standardization in any form, rhyme, reason and for that matter any purpose is superfluous, unwarranted, undesired and uncalled for. Apart from the intrinsic vulnerabilities of the said course not only being unscientific but also ending up in posing avoidable dangers. It will completely dilute the standards of medical education which is imperative for producing well equipped doctors and will lead to risking the human lives.

#### **Q.47: Would AYUSH Doctors during the bridge course be under dual control?**

##### **Government Position-**

Yes, control over their professional conduct would be exercised by the respective Councils /Commission depending on the medicine prescribed by them.

##### **IMA CLARIFICATION**

Dual control in respect of AYUSH practitioners including that of parent registering council and the NMC respectively is legally impermissible. The provision for disciplinary jurisdiction on them is not explicitly provided. To that extent the lacuna is substantial and cannot be allowed, as it entails conferment of practicing privileges without any ethical, moral and value based embargo which is tragic and unfortunate as it amounts to a total compromise with ethical and moral practice of the profession.

**Q.48: Enabling AYUSH practitioners to prescribe medicines in rural areas would relegate rural citizens to being second rate citizens?**

**Government Position-**

Healthcare delivery works on a referral system so that it does not put an extra load to the secondary and tertiary care facilities. Many SCs and PHCs i.e. point of contact in rural areas are functioning without doctors. AYUSH practitioner may, if posted, can provide better care. It is expected that the quality of primary and preventive healthcare available to rural citizens would improve as a result of giving proper training to AYUSH doctors. This also needs to be viewed in the light of certain states having already permitted them to practice modern medicine.

**IMA CLARIFICATION**

Any compromised, half-baked, ill prepared health practitioner through an impermissible modality in the name of providing manpower to the rural healthcare delivery would amount to generating compromised health personnel for the rural healthcare and thereby treating them as 'second grade citizens' and putting them to blatant discrimination and differentiation, which is constitutionally impermissible. It is very strange that instead of giving incentive to the medical professionals to serve in the rural areas, the bill will proposes to allowing unqualified persons to treat patients and risk their lives.

**Q.49: The Provision of Introducing a bridge course only on completely unanimous approval is too restrictive and will be difficult to operationlize?**

**Government Position-**

Such a stringent condition has been incorporated in order to ensure that there is absolutely no doubt or misgiving about the course of action to be adopted.

**IMA CLARIFICATION**

Providing for a provision and then saying it will be difficult to operationlize in itself is a questionable legislative operation which 'validates' the intent and then explicitly goes to 'dispute' the content. Such a legislative exercise and interpretation thereto by the proposing Govt. itself is unheard of and prima-facie appears to be too naive to fetch any credibility or credence of even the slightest magnitude.